



CITY OF MORGAN HILL

MONTEREY ROAD STREETSCAPE PLANNING PROJECT

REQUEST FOR PROPOSALS

**COMMUNITY ENGAGEMENT AND
URBAN STREETSCAPE PLANNING SERVICES**

Proposals Due: Monday May 24, 2010 by 5:00 pm PST

City of Morgan Hill
Monterey Road Streetscape Planning Project

Request for Proposals for Design Services

Issue Date April 26, 2010

The City of Morgan Hill is requesting proposals from firms to develop streetscape concepts for Monterey Road in the City's Downtown. The community process for arriving at an adopted streetscape concept will be considered just as important as the actual design work.

Overview

The City of Morgan Hill is located approximately 12 miles south of San Jose, 10 miles north of Gilroy and 15 miles inland from the Pacific Coast. Downtown Morgan Hill is located approximately one mile off U.S. Highway 101 which is the major north-south transportation corridor in the region. The City is located approximately 25 miles south of San Jose International Airport. Downtown Morgan Hill is centered on along Monterey Road. The Downtown core is generally defined by Main Avenue, the railroad tracks, Dunne Avenue, and Del Monte Avenue. This area has smaller lots and is a traditional Main Street downtown atmosphere.



Prior to the construction of Highway 101, Monterey Road was the major north-south transportation corridor. The streetscape was predominately a design for vehicular use. The 110 foot right of way consisted of two north and south bound traffic lanes with parallel parking on each side with very little

pedestrian amenities or landscaping except for a sidewalk. The completion of Highway 101 routed traffic around the City and reduced the vehicular pressure downtown. In the early 80's, with the formation of the new Redevelopment Agency the City proceeded to construct new public improvements to Monterey Road through the Downtown. These improvements added pedestrian amenities such as shade trees, brick paving at the corners with bulb-outs for outdoor dining. A street median was added with landscaping that recalled the native oak trees that were adjacent to Downtown on Nob Hill. Shade trellis and built-in game boards were also included. Flush curbs were built at the street crosswalks to ease pedestrian movement. These improvements were very forward thinking for that time. Some of the concepts like flush curbs are now resurfacing in current urban planning projects. The improvements have serviced the Downtown well for the past 25 years.

Downtown cities both small and large have seen a continuous process of economic leakage from central cores to outlying edge locations. Downtown Morgan Hill has witnessed this gradual but persistent and seemingly inevitable transformation from being the center of regional economic activity to a lesser role in the community. However, Downtown remains the entertainment center of the City with 25 restaurants in or close to Downtown.

With the adoption of The Morgan Hill Downtown Specific Plan, a vision for strengthening Downtown as the social and activity city center was established. A place where residences from all segments of the community can live, work, meet, shop, dine and participate in public celebrations. The plan describes a place like nowhere else; a place with its own scale, character and uses. The primary urban design goals and objectives addressed by the Specific Plan include:

- Creating an active Downtown village through intensifying residential, retail, restaurant and entertainment uses, within an urban setting improved with unified landscaping and streetscape improvements;

- Making Monterey Road more pedestrian and retail friendly, and improve other roads with better street lighting and streetscape improvements;

- Strengthening Downtown's identity and scale with a new design related to a traditional character; and

- Creating visual and physical linkages to Downtown with landscaping, bike paths and entry area features, and with linking downtown common parking areas available to the general public.

This Monterey Road Project is expected to create concepts for the Council to consider that will establish a new core nucleus for a place that creates activity, attracts people, and help make Downtown a regional destination. The reality is without creating a interesting place people actually want to live, work or visit it will be difficult to successfully rejuvenate our urban center.

Council's adoption of the City's General Plan Circulation Element Update and construction of roadway extensions such as Butterfield Boulevard and Santa Teresa should further relieve the vehicular pressure in the Downtown core. The circulation element update allows Council to explore new ideas, how including improvements to Monterey Road could strengthen Downtown's identity and foster new development.

The City has committed to facilitate Downtown development through land acquisition and public improvements and has placed special emphasis on Downtown development and revitalization. In 2008 the City committed \$40 million for both Downtown infrastructure and development. The City is also currently in the process of selecting a developer for Agency owned sites.

Community Input and Decision Making Goals

Goals - There are two key goals for this project:

Goal 1 - Maximize community wide involvement.

Morgan Hill has a tradition of an actively engaged community deeply interested in the future of Downtown and the community at large. The involvement of the stakeholders and Downtown business community is necessary; but the goal is to engage the community as a whole in the design process. The selected design team will be expected to implement this community outreach program and to solicit community wide input and consensus on the project. The success of the project is highly dependent on engaging the whole community as well as stakeholders in the design process.

As part of this RFP it is expected the responding team will define the scope of work required for the community wide outreach program required to obtain this goal, including any marketing and advertising materials cost.

It is important to obtain this community input prior to proceeding with the design. The design process should build on the ideas, information and insight received from the public outreach. The design team will be responsible to provide all public meeting facilitation.

The scope of work will include a public design charrette that documents the community's interest, ideas and response to the project. It will be expected this charrette will be an event where the team interprets and documents the ideas of the public during the meeting. It is expected any future design concepts will evaluate and incorporate this public input. The community and Council presentations meetings identified in the Scope of Work should be considered the minimum requirement.

Goal 2 - Assist Council in decision making process regarding planned modifications to Monterey Road.

The design team will be expected to make presentations to Council that evaluates the various strengths and weaknesses of each design concept. It is expected this evaluation process and design concepts will assist the Council in the making the decision regarding the preferred lane configuration of Monterey Road (4 lane to 2 or remain 4 lane).

Project Description

Project Boundary - The boundary for the scope of this design effort is approximately nine city blocks along Monterey Road. It is expected the southern boundary to be one block South of the intersection at East Dunne Avenue, the northern boundary of work will extend one block North of Main Avenue. East Dunne Avenue and Main Avenue should be considered the gateway intersections in to the Downtown, but the transition to new lane configurations should take place in the blocks before these intersections.

The east west boundary of the design effort will be one full block on either side of Monterey Road. The design effort will continue one block east and west to study the transitions between the new Monterey Road Streetscape and the existing side streets. Concepts will evaluate and recommend improvements to side streets such as lighting levels, type of new lighting, landscape improvements, sidewalk materials and other improvements that continue the Monterey Road concept throughout Downtown.

Design Concepts - The street right-of-way is 110' wide. The selected design team efforts will concentrate the feasibility of five realistic options for the streetscape including various parallel and diagonal parking arrangements. The City desires three concepts for two lane street and two concepts for a four lane street. Members of the Downtown Association have expressed an interest in one of the concepts to explore constructing a wide pedestrian activity median similar to Santana Row. All the streetscape concepts are expected to be developed in accordance with "Valley Transportation Authority", Community Design & Transportation, and Manual of Best Practices for Integrating Transportation and Land Use for possible future grant application funding.

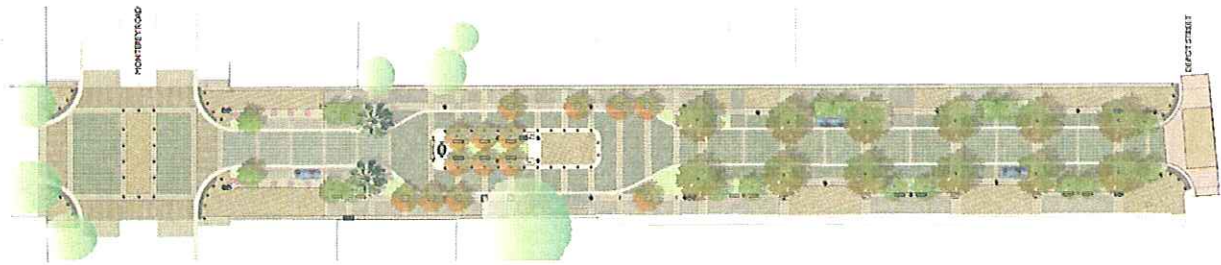
Multi-level Pedestrian Zones/Flood Plain - The entire Monterey Road rests in a flood plain. Typically this requires new buildings finished floor to a minimum of 1 foot above this flood plain level. The flood plain on Monterey Road is approximately one foot above grade at East Dunn Ave and six inches above grade at Main Ave. It is necessary to place the finished floor of new construction such as retail and commercial work approximately one-and one-half to two feet above actual street grade. New development is planned for next summer at Agency owned sites along Monterey Road. Included as part of this work, the design team will study how the new streetscape can transition from the existing sidewalk elevation to the higher elevation required for new development in the flood plain. This effort should concentrate at two Agency owned sites (A&B on map below) on Monterey Road. The team may be required to incorporate input and coordinate with the Agency selected developer for these sites.



We see this as an opportunity to develop different levels of pedestrian zones for the street. The pedestrian right of way designed at various levels and an existing street level with an added upper pedestrian plaza that connects to the retail storefront (similar to the Fourth Street shopping area in Berkeley where dock high industrial buildings were converted into retail use). This transition should not be abrupt but have a natural, easy pedestrian flow.



Similar City Projects – The recent completion of the Third Street Promenade provides an event /pedestrian street in the heart of Downtown. The reconstruction of East Third Street between Monterey Road and Depot Street completes a vision that reaches back to the founding of the City of Morgan Hill. As the commerce street, East Third Street was envisioned as the commercial corridor linking Monterey Road and the train station. Third Street Promenade provides wide sidewalks, flush curbs for outdoor dining and street events and a central focal point grove with water feature near the entertainment plaza with extensive landscaping. More plaza-like than a street feeling, the Promenade is designed to allow for up to four different closure configurations based on the size and scope of the street event.



Project Team and Qualifications

The City expects the lead for design team and effort will have extensive community outreach experience. Preferably we think either an urban planner or an architect might be the appropriate professional. The team organization will include the following, but is not limited to:

Urban Planner or Architect
Public Meeting Facilitator
Traffic Consultant
Landscape Architect
Architectural Illustrator
Computer modeling using "Form Z" visualization software
Exterior Lighting Consultant
Construction Cost Estimator

The team must have demonstrated expertise in successfully managing projects of the size and type of construction described in this document.

Scope of Services

The City is seeking the services of a full service urban streetscape planning team who will assist the City for the initial planning of this project. The scope of professional services to be provided shall include the completion of the tasks described in the attached "Exhibit A", Scope of Services, as well as other elements or modifications which may be suggested by consultants presenting proposals to better meet the needs and goals of the City of Morgan Hill. All services shall be provided in accordance with the City's Standard Consultant Agreement (see "Exhibit B"). Special attention shall be given to the Indemnification Requirement Section included in the consultant agreement as well as the Insurance Requirements. Identify the additional tasks your team requires in order to achieve the community outreach goals or exceptions you are proposing with respect to the Scope of Services, City's insurance requirements, and City's Standard Consultant Agreement.

All professional service Fees should be itemized by the Tasks listed according to the outline in Exhibit A, Scope of Services.

City Provided Services

City will provide a City Project Manager for facilitation and access to additional city provided documents and information and coordination with other departments. Questions or additional information regarding this request for proposal should be directed to:

Jim Dumas, AIA, NCARB
City of Morgan Hill
Development Services Center
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: 408.778.6480
Fax: 408.778.7869
Jim.dumas@morganhill.ca.gov

Schedule

Pre-Submittal Meeting/Site Walk Through	Tuesday May 4, 2010 @ 10:00 AM Location Development Services Center 17575 Peak Avenue Morgan Hill, CA 95037 Grand Conference Room
Submittal Deadline	Monday May 24, 2010 by 5:00 PM Submit five (5) hard copies with one (1) unbound copy and one (1) soft copy CD of your Proposal to: Jim Dumas, AIA, NCARB City of Morgan Hill Development Services Center 17575 Peak Avenue Morgan Hill, CA 95037
Selection Process	May 25 through June 11, 2010
Interviews of short listed firms	Tentatively scheduled for the week of June 14, 2010
Contract Negotiations	June and early July, 2010
Council Acceptance of Agreement	July 7 or July 21, 2010
Design Schedule	Start: July 2010 / Work Complete by: March 31, 2011
Final Council Meeting (Task 2.10)	March 24, 2011

Proposal Format

The Proposal will be thirty (30) pages maximum and will include as a minimum the following information:

- A Cover / Transmittal Letter
- B Team Information
 - List your firm's project manager and key project staff who will be assigned to the project.
 - Submit concise statement of qualifications and experience for each staff member committed to this project.
 - Provide information on all anticipated sub-consultants, listing their addresses, telephone numbers, key staff members assigned to the project and qualifications.
- C Firm Information
 - Firm Name, address, telephone number, fax number, e-mail address.
 - Name of person in your firm whom we should contact regarding your proposal.

- Number of years the firm has been in business, year organization established.
 - Type of organization: individual, partnership, corporation or other (please specify).
 - List of principals, officers, and associates of the firm.
 - List any lawsuits or arbitration proceedings that have been initiated by or against your firm in the past five years. Briefly state the nature of the action and the outcome.
 - Provide a list of projects you are currently working on, construction cost and the scheduled completion date for each.
 - Tell us anything else that you think we ought to know about your firm to assist us in making this selection. Why do you feel your firm is especially qualified to be engaged by the City on this project?
- D Past Projects
- Provide a description of similar projects which have been completed by your firm, within the last five years. For each project indicate:
- The type of project
 - The exact nature of your involvement and the scope of work
 - Location
 - Size (square footage)
 - The construction budget
 - The name, address and telephone number of the client
- E Scope of Work and Professional Service Fee
- Describe your understanding of the project, the scope of services to be provided and your approach to completing the work, including your community engagement process.
 - Provide a design process schedule in order for your team to complete the work by March 31, 2011.
- F Consultant Fee
- The primary goal of the consultant selection process is to rank each proposal based on the demonstrated competence and professional experience. Once a ranking has been established, the City will negotiate the scope of services and cost of providing the technical services within our established budget for design services.
 - Submit a fee matrix that follows the outline of tasks in "Exhibit A" Scope of Services. This matrix will also outline and include the costs of any sub-consultants used for that specific task. Add additional tasks your team requires in order to complete the community outreach and public presentation goals.
 - Fees will include all markups, overhead and profit and reimbursable expenses. The agreement shall provide for payment based on hourly time and material monthly payment with a guaranteed not to exceed amount.
 - Reimbursable expenses will also include the cost of all public outreach materials. This includes but is not limited to the printing and mailing of city wide meeting notices and project status information, website, public notices and scheduling input.

Selection Process

Proposals submitted by the deadline (no faxed proposals) will be evaluated based upon qualifications, experience, ability to perform and understanding of the project. The City reserves the right to select the Consultant based on the written proposal, however, the City may request that interviews be conducted with the top rated firms. Selection is at the sole discretion of the City.

The City may amend or terminate selection procedures at any time at its sole discretion. The City is not, under any circumstances, responsible for costs borne by proposers for preparing responses to this RFP, or any costs associated with the selection process. Each proposer shall bear its own such costs. All materials submitted in response to this solicitation will become the property of the City and unless the information is exempt from disclosure by law, the material submitted may be made available to the public. The City also reserves its rights to obtain further information from any and all responders submitting and to waive any defects as to form or content of any responses.

Attachments:

Exhibit A, Scope of Services

Exhibit B, Standard Consultant Agreement

Related Reference Materials:

"Valley Transportation Authority", Community Design & Transportation
A Manual of Best Practices for Integrating Transportation and Land Use

The below are available on City web site at www.morganhill.ca.gov/downtown

Morgan Hill Downtown Specific Plan (RFB Consulting Urban Design Studio)
Master Environmental Impact Report (David J. Powers Associates and Fehr & Peers, traffic consultant)
General Plan Circulation Element Amendment and Draft EIR
Parking Resources Management Strategy (DKS)
Demographics

Exhibit A –Scope of Services

Master Planning Services for Monterey Road Urban Streetscape Design with Pedestrian / Vehicular Circulation and Parking Concepts

The City requests a multidisciplinary team to include an architectural firm or urban planning firm as the project team leader and additional team composition that includes a public meeting facilitator, landscape architect, traffic consultant, architectural illustrator, computer modeling, exterior street lighting consultant and construction cost estimator.

Notes:

1. Tasks may be modified to reflect proposer's community process but the goals, design scope and schedule are to remain as stated in the RFP and this exhibit.
2. The City reserves all rights to modify or amend the scope of the project and Scope of Services at any time.

Task 1: Project Initiation/ Preliminary Design

- 1.1
 - A. Initial meeting with City to discuss schedule, process, communication lines, scope of work and goals. Consultant should identify any additional information required to be provided by the City. City desires various design options for four lane and two lane vehicular configurations for Monterey Road using a minimum of two different parking options for each as well as a concept of increasing the street median for pedestrian use. Scope of work requests the consultant to provide three configuration options for a two lane street and two options for a four lane street.
 - B. Site visit with consultants / Architectural context photos / Retrieve existing condition drawings / Develop base map.
 - C. Exterior Lighting Consultant to evaluate existing night lighting levels on side streets.
- 1.2 Prepare opportunities / Constraints map.
- 1.3 Prepare overall design schedule outlining in detail the steps and meeting dates required in order to meet the completion date and the goals.
- 1.4 Prepare a category of ideas that address elements of the street zones for community meeting discussion (History, Parking, Landscaping, Flood Plain Mitigation, Intersections and Pedestrian Amenities).
- 1.5 Design meeting with stakeholders group, general public and staff to review program and materials for community design charrette.
- 1.6 Initial public meeting/Design charrette / Gain insight from public regarding desired streetscape configurations, parking arrangements and other desired pedestrian and streetscape amenities. This will be a working meeting with the design consultants exploring concepts with the public during the meeting.
- 1.7 Design team to build on public input and develop initial preliminary streetscape concepts. Concepts to include as a minimum scope of work overall site plans, street cross sections and initial landscape materials selection.

- 1.8 Preliminary design concept review meeting with stakeholders group and staff.
- 1.9 Design team to further develop design concepts. This effort to include preliminary selection of materials and finishes, lighting concepts, landscape materials, additional details, flood plain mitigation for City owned sites and enlarged plans.
- 1.10 Design review meeting with stakeholders group and staff to prepare for community meeting.
- 1.11 Design team to further develop design concepts and prepare presentation materials of proposed concepts for public presentation. Materials will include three streetscape perspective black and white sketches at selected locations.
- 1.12 Community presentation meeting / Obtain public input on design concepts.
- 1.13 Design review meeting with stakeholders group to review input from community meeting and finalize materials for Council meeting.
- 1.14 Design team to finalize presentation documents for Council meeting.
- 1.15 Council presentation meeting to review direction and obtain input on design concepts.

Deliverables:

- 1a Executed agreement with design firm
- 1b Opportunities / Constraint Map
- 1c Existing Architectural Context Photos
- 1d Design Schedule
- 1e Meeting Notes from Public Meeting Documentation / Ideas
- 1f Five different preliminary design concepts for the streetscape, enlarged plans & cross sections.
- 1g 3D Architectural Sketches of Streetscape Options

Task 2: Schematic Design

- 2.1 Coordinate with traffic consultant and analyze motorized and non-motorized circulation patterns / Identify pedestrian interface hazards and mitigation. Study design options how to up-grade the safety and mitigate pedestrian crossings that occur downtown without a corner traffic signal (such as Third Street). Analyze the various parking options circulation and strengths as well as weaknesses.
- 2.2 Lighting consultant will evaluate existing side street lighting and propose a new concept that provides additional lighting levels that balance esthetics and safety. Concept should also evaluate the different options for types of street lamps and lighting available.
- 2.3 Further refine design concepts and streetscape details incorporating public and Council input. Coordinate with City regarding proposed new development and design concepts for streetscape flood plain mitigation along Monterey Road. Identify proposed landscaping.
- 2.4 Prepare preliminary construction budget for each design concept.
- 2.5 Prepare computer model of each streetscape concept using "Form Z" simulation software. Export quick time drive through movies of each concept.
- 2.6 Staff / Stakeholders group design review meeting.
- 2.7 Prepare Final Schematic Design Documents for Preferred Concepts (Colored Site Plans including Landscaping plan and materials, Computer Drive Through Movies, Cross Sections, Enlarged Plans & Details and Budgets)
- 2.8 Staff / Stakeholders meeting to review final schematic design, budget and prepare for community presentations.
- 2.9 Community meeting to present final design concepts and obtain feedback.

- 2.10 Council meeting to finalize schematic design options / Council to Select preferred option.
- 2.11 Revise schematic design documents based on Council recommendation and re-submit final schematic design documents to City.

Deliverables:

- 2a Opportunities / Constraints Map
- 2b Public Meeting Documentation / Ideas
- 2c Circulation Analysis Plan with Recommended Alterations and
- 2d Streetscape Plans with Parking Plan, Pedestrian features, Lighting Layout with fixture selection and Basic Planting Palette
- 2e Three Architectural Sketches that show character of Streetscape Options
- 2f "Form Z" Computer Models and Quick Time Movies
- 2g Street Cross Sections and Dimensions
- 2h Project Budgets
- 2i Package Final Deliverables into 15" x 21" Colored Booklet Format incorporating documentation of history of Public Involvement and Input as well as full size colored drawings. Also provide a soft copy on CD.

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS

Exhibit B

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the MORGAN HILL REDEVELOPMENT AGENCY, a public body corporate and politic, ("AGENCY"), and _____ a California Business Entity, ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **AGENCY Authority.** This Agreement is entered into pursuant to authority
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until _____ at which time CONSULTANT'S services shall be completed. The Executive Director is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be _____, as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$ _____. Total compensation under this Agreement shall not exceed _____ dollars and shall be billed based on the hourly rates set forth in **Exhibit B.**
 - 4.2. **Billing.** CONSULTANT shall provide AGENCY with a monthly invoice containing dated, detailed, and itemized descriptions of all services performed and expenses incurred by CONSULTANT. The minimum unit of billed time shall not exceed one tenth of one hour. AGENCY shall pay for all services and expenses up to the limit of compensation set forth above, that in the AGENCY'S judgment were necessary and reasonable.
5. **Termination.** AGENCY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to AGENCY an itemized statement of services performed for which compensation has not been paid. AGENCY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to AGENCY all documents in its possession without additional compensation to CONSULTANT.
6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by highly qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws.
7. **Insurance Requirements.**
 - 7.1. **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until it has obtained AGENCY approved insurance. For general liability insurance policies, CONSULTANT shall provide AGENCY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The AGENCY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds; and,
- the insurer waives the right of subrogation against AGENCY and AGENCY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- insurance shall be primary non-contributing.

CONSULTANT shall furnish AGENCY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to AGENCY.

- 7.2. Workers' Compensation Insurance. CONSULTANT and all subcontractors shall maintain Workers' Compensation Insurance, as required by law.
- 7.3. Insurance Types and Amounts. CONSULTANT shall maintain comprehensive general liability insurance; professional errors and omissions liability insurance; and automobile insurance each with policy limits of at least \$1,000,000 per occurrence for general liability, \$1,000,000 per accident for automobile liability and \$1,000,000 per claim for professional errors or omissions.
- 7.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed and admitted, or otherwise legally authorized to carry out insurance business, in California with a current A.M. Best's rating of no less than A:VII.

8. **Non-Liability of Officials and Employees of the AGENCY.** No official or employee of AGENCY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of AGENCY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from AGENCY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by AGENCY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Address of AGENCY is as follows:

Executive Director	with a copy to:
Morgan Hill Redevelopment Agency	Agency Secretary
17555 Peak Avenue	Morgan Hill Redevelopment Agency
Morgan Hill, CA 95037	17555 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and AGENCY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **Access to and Audit of Records.** The AGENCY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the AGENCY or as part of any audit of the AGENCY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

15.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of AGENCY. CONSULTANT shall provide AGENCY with copies of these items upon demand or upon termination of this Agreement.

16. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as

represented by AGENCY, it shall immediately inform AGENCY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from AGENCY.

17. **Time of Essence.** Time is of the essence in the performance of this Agreement.

18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of AGENCY.

19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. **Defense and Indemnification.**

20.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless AGENCY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors arising out of or any way connected with the performance of this Agreement ("CLAIM").

20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless AGENCY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.3. **Exceptions.** CONSULTANT is not required to indemnify or defend INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the AGENCY.

20.4. **Immediate Duty.** CONSULTANT'S duty to indemnify, defend and hold harmless the INDEMNITEES arises immediately at the time that any CLAIM is alleged against INDEMNITEES, whether or not such CLAIM includes allegations of negligence (active or passive) or willful misconduct by INDEMNITEES, and whether or not such CLAIM is groundless, false or fraudulent.

20.5. **Duty to Defend.** CONSULTANT'S duty to defend the INDEMNITEES continues until a court of competent jurisdiction determines with finality that the CLAIM did not arise out of, pertain to, or relate to any negligence, recklessness, or willful misconduct of CONSULTANT, and/or

its agents, officers, employees, subcontractors, or independent contractors arising out of or any way connected with the performance of this Agreement.

20.6. Duty to Indemnify. CONSULTANT'S duty to indemnify and hold harmless the INDEMNITEES continues until a court of competent jurisdiction determines with finality that the sole negligence, active negligence or willful misconduct of the AGENCY was a proximate cause of the CLAIM and also determines the percentages of fault that is attributable to the AGENCY and the CONSULTANT, respectively. Upon such finding, CONSULTANT shall indemnify the AGENCY only to the extent of the CONSULTANT'S percentage of fault.

20.7. Independent Counsel. It is understood and agreed that the allocation of fault between the AGENCY and the CONSULTANT triggers the INDEMNITEE'S right to independent counsel as provided in Civil Code §2860. AGENCY reserves the right to select legal counsel and control the defense of any CLAIMs which come within CONSULTANT'S obligation to indemnify, defend and hold harmless the INDEMNITEES.

20.8. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

20.9. Right to Offset. AGENCY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due AGENCY from CONSULTANT as a result of CONSULTANT's failure to pay AGENCY promptly any indemnification arising under this Section (20) and any amount due AGENCY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21. Modification. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written Agreement executed by AGENCY and CONSULTANT.

22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

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25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

MORGAN HILL REDEVELOPMENT AGENCY

Agency Secretary
Date: _____

Executive Director
Date: _____

APPROVED:

Risk Manager
Date: _____

By:
Title: _____

Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

APPROVED AS TO FORM:

Date: _____

Agency General Counsel
Date: _____

By:
Title: _____

Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: _____